

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

**Notice of Inquiry on Broadband  
Deployment and Adoption on Tribal Lands  
NBPP Public Notice #5**

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**GNDocket No. 09-47  
09-51**

**09-137**

**Comments of Frontier Communications**

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Date: December 9, 2009

**Before the  
Federal Communications Commission  
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**Notice of Inquiry on Broadband  
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**GN Docket No. 09-47  
09-51  
09-137**

**Comments of Frontier Communications**

Frontier Communications (“Frontier”) <sup>1</sup> hereby submits its reply comments on the above-captioned matter pursuant to the Federal Communications Commission’s request for comments in the September 23, 2009 Public Notice.

**EXECUTIVE SUMMARY**

Frontier submits these reply comments in response to comments filed by Sacred Wind Enterprises, Inc. (Sacred Wind) in the above-referenced docket. Frontier serves the Navajo Nation in the States of Arizona, New Mexico and Utah. While we agree that broadband availability in those areas is not as high as other areas of the country, we do not agree with the solution proposed under the “*Second Essential Tool*” noted in Sacred Wind’s response <sup>2</sup>. Transferring ownership from incumbent carrier to tribal carriers doesn’t make broadband expansion more feasible.

**1. Impediments to Broadband Adoption and Deployment on Tribal Lands**

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<sup>1</sup> Frontier is a mid-sized holding company with incumbent local exchange carrier (ILEC) operations in 24 states.

<sup>2</sup> See Comments of Sacred Wind Enterprises, Inc., GN Docket Nos. 09-47, 09-51, 09-137, at 4

The cost of providing telecommunications and broadband services in the remote areas of the Navajo Nation is significant. The terrain and distance between population centers greatly increase the costs of service regardless of whether the carrier is an "out of state incumbent" or a local provider. Any carrier must assess the feasibility of their capital expenditures and make those decisions based upon a reasonable return on investment.

As noted in Sacred Wind's comments, the Right of Way (ROW) process in the Navajo Nation is burdensome and time consuming. It also entails an assessment fee from the Resource Committee of the Nation which is very often prohibitive in amount and is not set based upon any objective measure.

The Right of Way (ROW) process encountered with construction in tribal areas requires numerous additional steps as compared to non-Tribal lands. These additional steps include: archaeological studies prepared by an authorized archaeologist, an environmental assessment report submitted to Tribal Fish & Wildlife Dept. and U.S. Bureau of Indian Affairs, Land user's Consent Survey, Right of Way maps, and a Permit to Encroach. After the Right of Way application is approved by the tribe, it must be approved by several other offices; Land Administration, Fish & Wildlife Dept., Historic Preservation Office, Tribal Environmental Protection Administration, Division of Natural Resources, Department of Justice, Office of the President, Legislative Counsel, Resources Committee and again to the Office of the President to issue Tribal consent. Finally, the ROW will be approved by the Bureau of Indian Affairs. This is a long and complex process which significantly adds to the lead time for broadband or telecommunication expansion of any kind in tribal areas. Attachment A

denote the ROW process on the Navajo Nation. Another significant barrier in this process is the assessment levied by the Resource Committee of the Nation. This fee can be in excess of \$100,000 and is assessed on an arbitrary and capricious basis. The fee is oftentimes disproportionate to the value of the ROW obtained. A streamlined ROW process and an objective basis for assessment would encourage more telecom expansion in native lands.

## **2. The Solution is Not “Localizing” all Existing Carriers in Tribal Lands**

Sacred Wind proposes to solve the broadband availability issue by “localizing” the existing “out of state carriers” and transferring their property to local tribal carriers.<sup>3</sup> They note successes in Arizona and New Mexico with transferring property to tribally oriented carriers without citing the specifics of those successes. They contend that using Federal funding to assist tribal companies to purchase assets from existing carriers is a better use of funds than to offer Federal funding to the existing carrier to assist in the expansion of broadband facilities. If the new company is Federally-funded for the expansion of broadband where the previous provider was not, it only stands to reason that more expansion can be accomplished by the new provider. They note that for these tribally oriented companies, RUS loans and grants are essential—“Without those, tribally oriented companies could not succeed”.<sup>4</sup> This invalidates the concept that transferring the ownership of tribal telecom assets alone would have any impact on broadband deployment and adoption. Any available funding for broadband should be made available to all carriers on a non-discriminatory basis.

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<sup>3</sup> See Comments of Sacred Wind Enterprises, Inc., GNDocket Nos. 09-47, 09-51, 09-137, at 4

<sup>4</sup> Id., at 3

As noted in the previous section, the assessment fee charged for ROW in the Navajo Nation is an arbitrary amount that can vary based upon who is requesting the ROW. Therefore, tribally oriented companies could be charged lower fees than a non-tribal entity. This gives a discriminatory advantage to one company over another.

### **CONCLUSION**

Broadband expansion in Tribal areas is more costly than in non-Tribal areas due to the remote nature, the ROW process, and in some cases, geography and terrain. Ownership by a tribally oriented entity does not automatically lift any of these impediments. This increased cost exists for all carriers regardless of ownership.

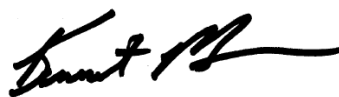
An objective and streamlined ROW process would significantly improve this process and encourage more broadband deployment. Any Federal funding for the expansion of broadband should be made available to all carriers on a non-discriminatory basis.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I, Kenneth F. Mason, do certify that on December 9, 2009, the aforementioned ***Comments of Frontier Communications*** were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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By: \_\_\_\_\_

Kenneth F. Mason

# **N.C.C. Right of Way Flow Chart**

